

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

KELLEY FOODS OF ALABAMA, INC.

PLAINTIFF

VERSUS

CIVIL CAUSE NO. 1:04cv 1246-B

MYERS NISSI & CO., INC., a corporation,
d/b/a VERTICALSOFT

DEFENDANT

DEFENDANT'S DESIGNATION OF TRIAL WITNESSES AND EXHIBITS

NOW INTO COURT, through undersigned counsel, comes defendant, Myers Nissi & Co., Inc., and provides the following list of witnesses and exhibits to be utilized at the trial of this matter:

I. **Witnesses (will call):**

1. Richard Nissi
Myers Nissi & Co., Inc.
5 Pond Park Road, Suite 2
Hingham, MA 02189
2. Don Tyler
Myers Nissi & Co., Inc.
5 Pond Park Road, Suite 2
Hingham, MA 02189
3. Jim Stoltz
Myers Nissi & Co., Inc.
5 Pond Park Road, Suite 2
Hingham, MA 02189

(may call)

4. Jack Reynolds
Myers Nissi & Co., Inc.
5 Pond Park Road, Suite 2
Hingham, MA 02189

5. Any witness necessary for impeachment purposes

II. Documents (will introduce):

1. Myers Nissi Limited Warranty Agreement
2. VerticalSoft Professional Services Agreement
3. Navision International Program License Agreement (IPLA)
4. Addendum to IPLA

(may introduce)

5. Letters and emails between Myers Nissi and Kelley Foods.
6. Upgrade Agreement for Navision Products
7. Navision Annual Upgrade and Support Plan
8. Navision Escrow Agreement
9. Any document necessary for impeachment purposes

All of the above documents, with the exception of any potential impeachment documents, have been previously provided to the plaintiffs.

Respectfully submitted,

By /s/ John M. Herke
JOHN M. HERKE (#HER045)
PAUL D. PALERMO T.A. (#19725)
SPYRIDON, KOCH, PALERMO & DORNAN
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Metairie, Louisiana 70002
Telephone: (504) 830-7800
Facsimile: (504) 830-7810
Counsel for Myers Nissi & Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Designation of Trial Witnesses and Exhibits has been provided by facsimile on the 2nd day of August, 2006 and by mailing a copy of same to by First Class United States mail, properly addressed and postage prepaid to

Mr. Mark Vaughan
Cannon, Vaughan & Malloy
Post Office Box 647
Elba, AL 36323

Howard P. Walthall
Burr & Forman, LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham, AL 35203

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/s/ John M. Herke

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